IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8677 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT

Versus

SHAH NATWARLAL MALUKCHANDBHAI

Appearance:

Mr.PREMAL JOSHI, A.G.P. for Petitioners

MR YOGESH S LAKHANI for Respondent No. 1

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 02/12/2000

C.A.V. JUDGEMENT

1. In response to the notice of this petition Shri Y.S.Lakhani, learned Advocate appeared for the respondent and opposed the admission of this writ petition. Shri Premal Joshi, learned A.G.P. was heard on admission of

this petition.

2. The prayer of the petitioners in this writ petition is for issuing writ of certiorari setting aside the impugned order dated 22.7.1999 passed by the respondent No.2 (Annexure : E) and restoring the order dated 20.8.1993 passed by the Collector, Rajkot (Annexure : D).

3. Brief facts are that the respondent No.1 had purchased pieces of land in village Hasanpur in Vankaner Taluka of Rajkot District by Registered Sale Deed . The land purchased by the respondent No.1 consisted of Survey No.109/1, Area 1 Acre - 9 Gunthas, Survey No.128/1 Area 4 Gunthas and Survey No.113/1, Area 3 Acres - 22 Gunthas. Entry No.698 dated 20.5.1980 was mutated accordingly which was certified on 21.12.1990. Thereafter the respondent No.1 purchased agricultural land of village Bhayati - Jambhudia bearing Survey No.97 admeasuring 2 Acres - 9 Gunthas as well as Survey No.100 measuring 3 Acres - 2 Gunthas and entry Nos.425 and 426 were mutated which were certified on 17.4.1982. The Assistant Collector, Morbi on finding that both the sale transactions were in breach of Section 54 of the Saurashtra Gharkhed, Tenancy Settlement and Agricultural Land Ordinance, 1949, issued show cause notice to the respondent No.1 on 4.1.1991 calling upon him to show cause as to why the aforesaid three entries mutated in his name should not be taken in revision and cancelled. Annexure : A is the copy of said Anotice. Subsequently Assistant Collector, Morbi by his order dated 8.3.1991 informed the respondent No.1 that looking to the documents produced by him the aforesaid entries are not liable to be taken into suo-motu revision, vide Annexure : B. Thereafter the order Annexure : B of the Assistant Collector, Morbi was challenged by the petitioners before the Collector in Appeal No.103 of 1992. The Collector, Rajkot findings that the order of the Assistant Collector at Annexure : B was in contravention of the aforesaid Ordinance issued show cause notice to the respondent No.1 calling him to show cause why the sale transactions which were in violation of Section 54 of the Ordinance be not set aside and proceeding u/s. 75 of the Ordinance be not initiated for summary eviction from the land in question. It was also required from the respondent No.1 to show cause why mutation entries should not be cancelled. Annexure : C is the copy of show cause notice. In response to the composite show cause notice for cancellation of mutation entries and for initiating the proceeding u/s. 75 of the Ordinance the respondent No.1 appeared and filed

explanation, but by order dated 20.8.1993 the orderof the Assistant Collector dated 8.3.1991 was set aside. The sale transactions were held to be in violation of Section 54 of the Ordinance. It was ordered that the respondent No.1 be evicted u/s. 75 of the Ordinance and possession of the land in question may be taken over by the State Government vide Annexure : D. Against the order passed by the Collector at Annexure : D the respondent preferred revision before the Additional Chief Secretary (Appeals), Revenue Department, who by order dated 22.7.1999 set aside the order of the Collector dated 20.8.1993 and restored the mutation entries No.698 of village Hasanpur and 425 and 426 of Bhayati Jambhudia in the name of the respondent No.1 vide Annexure : E. Feeling aggrieved against the order Annexure : E which is wrongly mentioned as Annexure : D in Para: 6 of the writ petition, that this petition has been filed.

4. English translation of the impugned order has been examined and the learned A.G.P. was heard so also Shri Y.S. Lakhani for the respondent.

5. Shri Joshi, learned A.G.P. contended that the impugned order is patently illegal hence the petition is required to be admitted for hearing. According to him there was apparent breach of Section 54 of the aforesaid Ordinance, and as such the sale deeds were illegal and were rightly ignored and mutation entries on the basis of the sale deeds were rightly cancelled by the Collector. He further contended that the respondent No.1 was resident of Maharashtra and was agriculturist there, but after disposing of his agricultural land he shifted and migrated to Gujarat and after settling at Gujarat, after few years, he purchased the agricultural land and as such he could not be agriculturist and agricultural land could not be purchased by him. Reference was made to Section 54 of the Ordinance. Shri Joshi placed reliance upon Section 54(1)(b) of the aforesaid Ordinance and contended that under this provision no mortgage of any land or interest therein in which possession of the mortgaged property is delivered to the mortgagee shall be valid in favour of a person who is not the agriculturist. He also referred to Sub-section (c) of Section 54(1) of the Ordinance and argued that under this provision no agreement made by an instrument in writing for the sale, gift, exchange, lease or mortgage of any land or interest therein could be made without permission of the Collector as mentioned in the first proviso to sub-section (c) of Section 54(1) and since no prior permission of the Collector was obtained the Sale Deeds were illegal and mutation entries on the basis of such sale deeds were

liable to be cancelled and action could be taken for summary eviction of the respondent No.1 u/s. 75 of the Ordinance.

5. Shri Y.S. Lakhani, however, argued that actually the respondent No.1 has been harassed and thrice notices were issued u/s. 211 of the Bombay Land Revenue Code and that too after lapse of 17 years hence the action taken by the Appellate Authority was illegal and it was rightly set aside by the Addl. Chief Secretary, in the impugned order. The English translation of the impugned order was read over before me.

6. In the impugned order it is clearly mentioned that the respondent herein was holding agricultural land in village Amalner in State of Maharashtra from 1969 to 1977 and he was himself cultivating the same. He migrated to Gujarat for the purpose of establishing Ceramic Industry in village Hasanpur of Vankaner Taluka. For this purpose he purchased agricultural land of Survey No.109/1, 113/1 of Hasanpur on 17.4.1980. On 28.9.1981, the District Development Officer granted permission to the respondent herein for non-agricultural use of the land for Ceramic Industry and thereupon Ceramic Industry was constructed and was running and is also running according to the impugned order. In the impugned order it was found that the respondent and his family members were possessing agricultural land in Maharashtra and from there he shifted to Gujarat and purchased agricultural land for which he was to obtain prior sanction of the Collector.

7. It further appears that the first show cause notice u/s.211 was issued by the Assistant Collector, Morbi on 4.1.1991 regarding entry No.426 and after considering the reply of the respondent the Assistant Collector vide order dated 8.3.1991 passed an order in favour of the respondent observing that these entries were not liable to be taken in revision. The show cause notice was discharged. No Appeal was preferred by the State Government nor any revision was filed against this order.

8. The matter was taken up thereafter when new Assistant Collector took charge in place of previous Assistant Collector who had discharged the show cause notice issued by him. The Successor Assistant Collector, issued second time show cause notice on 12.4.1992 regarding three entries No.698, 425 and 426 of Hasanpur and Jabhudia. Written explanation was given by the respondent herein on 25.5.1992. The Successor Assistant

Collector by order dated 11.11.1992 passed an order to confiscate both the lands. Feeling aggrieved against this order the respondent herein filed Appeal before the Collector. Since the order was in favour of the Government no Appeal could be filed by the State Government. The Collector allowed the Appeal of the respondent herein and set aside the order of the Assistant Collector. This second action of the Successor Assistant Collector was wholly uncalled for more particularly when the earlier show cause notice on the same subject was withdrawn by his predecessor in office. Since Appeal was allowed by the Collector the order of the Successor Assistant Collector should have been set aside, but it appears that the Collector was not satisfied with the matter and he himse lf issued suo-motu show cause notice on 8.3.1993. On this subsequent suo-motu action by the Appellate Authority, namely, the Collector order for confiscation of the land was passed and order for summary eviction of the respondent herein was also passed.

9. In the impugned order it has been rightly observed that the order for confiscation could not have been passed by taking suo-motu action in Appeal by the Collector after 12 or 13 years and that such action could be taken only within one year and as such the order of confiscation after 12 or 13 years is illegal. It also appears that total delay was of 17 years. Such delayed action on the above facts and circumstances of the case was itself sufficient for the Addl. Chief Secretary to quash the order of the Collector.

10. Shri Joshi, learned A.G.P., however, placing reliance upon the Judgment of the case of Saburbhai Hemabhai Chauhan v/s. State of Gujarat & ors., reported in 2000(1) GLR 835 contended that since the sale deeds were illegal and void being in violation of Section 54 of the Ordinance the mutation entries made on the strength of the sale deeds were void abinitio and could be treated as nonest and the validity of such illegal nonest order could be questioned in any proceeding at any stage by anybody. Shri Joshi further contended that the very nature of nonest order in its effect does not create any right or interest. It being void confers neither any status nor any right with the result that such nonest or illegal order, decision, transaction or action would be for all purposes ineffective and of no consequence in the eyes of law. However, in this very case it was observed by me that normally the power of revision should be exercised within a reasonable time whereby law no period is prescribed. Since in the instant case action was

taken after 17 years by the Collector and after 12 or 13 years by the Assistant Collector such action cannot be permitted to be taken u/s.211 of the Bombay Land Revenue Code. Thus, on this ground itself the writ petition deserves summary rejection and it need not be entertained for further detailed enquiry.

11. It is not a case where non-agricultural use was not in the knowledge of the State Authorities. Construction over the plots in Hasanpur was made in the year 1982 and Ceramic factory, Cinema Hall and residence are existing thereon which are in use. For running the cinema the Collector and the District Magistrate issued licence on 15.12.1988 which has been revalidated upto 31.12.2001. It is difficult to conceive that while granting the licence the collector would not have satisfied himself about the clear title of the land. The Addl. Chief Secretary has rightly drawn inference that the Collector and the District Magistrate at the time of granting Cinema licence must have seen the clear title of the land. Consequently it cannot be accepted that the delay in taking action occurred because illegal entry was not in the knowledge of the State Authorities.

12. The Addl. Chief Secretary has rightly observed in the impugned order that there is no provision u/s.54 of the Ordinance for confiscation of land and that there is no similar provision u/s.75 of the Ordinance. Section 75 provides for summary eviction of a person unauthorisedly occupying or wrongfully being in possession of any land. Since composite notice was issued by the Collector under the two sections 54 and 75 of the Ordinance only summary eviction could be ordered and not confiscation. There is another patent illegality in the order of the Collector dated 15.1.1993 in which he has set aside the orders of the Assistant Collector dated 8.3.1991 and subsequent order of Successor Assistant Collector dated 11.11.1992. As mentioned above earlier no Appeal was preferred by the State against the order dated 8.3.1991. It was in favour of the respondent of this writ petition. Against the order dated 11.11.1992 Appeal was preferred by the respondent herein and in the Appeal of the respondent the order dated 8.3.1991 which was in his favour could not be set aside by the Collector under order dated 15.1.1993. On this ground also the Addl. Chief Secretary could have interfered with the order of the Collector. Thus, there is no prima facie ground for intereference in the impugned order.

The writ petition, on the above facts, is summarily rejected with no order as to costs.

sd/-

Date : December 02, 2000 (D. C. Srivastava, J.)

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